

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE LITIGATION

MDL No. 1456

THIS DOCUMENT RELATES TO:  
  
ALL ACTIONS

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**CLASS PLAINTIFFS' RENEWED MOTION FOR APPROVAL OF THE FORM OF  
CLASS NOTICE AND THE MANNER OF NOTICE AND REPORT ON STATUS OF  
INDIVIDUAL NOTICE TO PART B CLASS MEMBERS**

On June 21, 2006 Plaintiffs submitted a Motion for Approval of the Form of Class Notice and the Manner of Notice to class members. Defendants AstraZeneca, Bristol-Myers Squibb, Johnson & Johnson and Shearing Plough submitted responses opposing certain substantive aspects of Plaintiffs' proposed form of notice. The Court held a hearing on June 26, 2006 on issues related to the timing of class notice as well as the form and manner of notice.

During the June 26, 2006 hearing, the Court provided the parties with certain direction on the substance of the notices and ordered the parties to confer in a further attempt to resolve any disagreements over the form of notice. The Court also instructed the parties to confer on the content of any pre-recorded messages for toll-free numbers to be provided to class members, a script for Court personnel directing class members to the website and/or the toll-free numbers, and on the content of the web-page referenced in the notices.

The Court also heard testimony from Plaintiffs' class-notice expert Katherine Kinsella of Kinsella/Novak Communications concerning Plaintiffs' media plan for published notice to

supplement direct mail to Medicare Part B beneficiaries and Third Party Payors and provided Plaintiffs with direction on the publication plan. The Court ordered that Plaintiffs provide a revised publication plan.

Plaintiffs' hereby renew their Motion for Approval of the Form and Manner of Class Notice and report to the Court on the remaining issues.

**A. Form of Notice**

The parties have conferred at length concerning the form of all four notices. Plaintiffs are pleased to report to the Court that there remain no outstanding disagreements among the parties concerning the substance of those notices in view of the Court's rulings on June 26, 2006. The forms of notice are attached as Exhibits 1 through 4 to the Declaration of Edward Notargiacomo In Support of Plaintiffs' Renewed Motion for Approval of the Form of Class Notice filed herewith. As the Court requested, Plaintiffs are also providing the Court with copies of the notices in electronic form in case the Court wishes to make further edits.

**B. Toll-free Phone Scripts and Web Page**

Plaintiffs have provided Defendants with preliminary drafts of portions of both the toll-free phone scripts as well as text for the proposed web-site. The parties prioritized their efforts to confer on the forms of notice, as those are the most time sensitive aspects of the notice plan, and have not yet conferred on the content of scripts or web page. Because these portions of the program are less time sensitive than the forms of notice, the parties intend to continue to confer on their content with the hope of providing the Court with content that has been agreed upon by all parties well in advance of when this information would need to be finalized. To the extent there are any disagreements between the parties as to whether the content appropriately gives

effect to the Court's rulings on June 26, 2006 the parties will present any such disputes to the Court after they have had the opportunity to meet and confer.

**C. Media Plan**

At the direction of the Court, Ms. Kinsella made changes to Plaintiffs' proposed publication plan. The revised publication plan is attached as Exhibit A to the Affidavit of Katherine Kinsella in Support of Plaintiffs' Renewed Motion for Approval of the Form of Class Notice filed herewith. Ms. Kinsella's affidavit explains the changes to the publication plan, including figures for accumulated reach and frequency, including mailed notice, as of October 22, 2006, and addresses some of the issues the Court raised in the June 26 hearing. Ms. Kinsella's publication plan assumes approval by the Court of the forms of notice by July 15, 2006.

**D. Individual Notice to Medicare Part B Class Members**

The parties have had multiple conversations with attorneys for the Center for Medicare and Medicaid Studies ("CMS") to gain further understanding of the issues related to the timing of receipt of the names and addresses of Medicare Part B class members for direct mail purposes. The information provided by CMS in conversations with the parties to date is different from that provided in the June 26 hearing. CMS now indicates that in order to provide names and addresses for the entire class period it will take approximately six months. In order to provide information for the years 1998 forward, CMS's estimate is three months. CMS indicates that it will soon be filing an affidavit with the Court to supplement the information provided in the June 26, 2006 hearing which will provide greater detail as to the process involved in extracting this data and the reason for its time estimates. The parties continue to confer with CMS's counsel, as well as with a technical expert at CMS, to ensure that the form of information received from

CMS will be compatible and usable by the class notice administrator for purposes of effectuating a mailed notice to Medicare Part B class members. The parties expect to be able to report on the outcome of those technical discussions at the hearing on July 6, 2006.

DATED: June 30, 2006

By /s/ Steve W. Berman

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**CERTIFICATE OF SERVICE BY LEXISNEXIS FILE & SERVE**

Docket No. MDL 1456

I, Edward Notargiacomo, hereby certify that I am one of plaintiffs' attorneys and that, on June 30, 2006, I caused copies of **CLASS PLAINTIFFS' RENEWED MOTION FOR APPROVAL OF THE FORM OF CLASS NOTICE AND THE MANNER OF NOTICE AND REPORT ON STATUS OF INDIVIDUAL NOTICE TO CLASS MEMBERS** to be served on all counsel of record by causing same to be posted electronically via Lexis-Nexis File & Serve.

**/s/ Edward Notargiacomo**

Edward Notargiacomo